

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

PACIFIC TOPSOILS, INC.,	)	
	)	
Appellant,	)	PCHE No. 89-34
	)	
v.	)	
	)	
SHOHOMISH HEALTH DISTRICT,	)	FINAL FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW AND ORDER
Respondent.	)	

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On March 14, 1989, Pacific Topsoils, Inc., filed an appeal contesting Snohomish County Health District's denial of a permit to continue operating a sewage sludge composting operation. A hearing was held on January 25, 1990, in Everett, Washington. <sup>For the</sup> Pollution Control Hearings Board present were: Chair Judith A. Bendor, presiding, and Member Wick Dufford.

Appellant Pacific Topsoils was represented by Attorney James Rigby. Respondent Snohomish Health District was represented by Attorney Allen D. Sanders.

The proceedings were recorded by court reporters affiliated with Gene Barker & Associates.

1        Witnesses were sworn and testified; exhibits were admitted and  
2 examined. Counsel made argument. From the foregoing, the Board ruled  
3 that the permit denial was affirmed. This written decision confirms  
4 that ruling:

5                                FINDINGS OF FACT

6    I

7        Pacific Topsoil, Inc., does business at 145002 35th Avenue SE in  
8 Bothell, Washington, Snohomish County. The company receives partially  
9 treated semi-solid sewage sludge from municipal waste treatment  
10 plants. It handles the sludge and composts it with other organic  
11 material. The combined material is dried and sold to enhance soils.

12     II

13        The Health District is a municipal corporation organized under  
14 the State of Washington laws and the Snohomish Health District Board  
15 of Health Charter.

16        In January 1987 the Health District issued a permit for operation  
17 of the Pacific Topsoil facility. This permit was renewed in  
18 June 1987, to expire one year later.

19     III

20        In 1988, the Health District both corresponded with appellant and  
21 inspected the facility, including a letter dated April 11, 1988, and a  
22 site visit on June 8, 1988.

23        On June 6, 1988 Pacific Topsoil applied for a permit renewal. On  
24

1 August 4, 1988 the Health District granted a permit to operate until  
2 August 31, 1988 ("provisional permit"). This letter raised a number  
3 of issues and questions about the facility's operation.

#### 4 IV

5 By letter dated September 9, 1988 the Snohomish County Planning  
6 Division, in response to an inquiry from the Health District, ruled  
7 that the Pacific Topsoil sludge operation was not a permitted use  
8 under the current zoning for the subject property.

9 The Health District, by letter dated September 27, 1988, informed  
10 Pacific Topsoil that based on the Planning's zoning determination, no  
11 further sludge could be accepted on-site. Existing sludge on-site  
12 could be composted and sold. This letter in essence denied Pacific  
13 Topsoil a permit to operate. The decision was based on the Snohomish  
14 County Planning determination of non-compliance with applicable zoning.

#### 15 V

16 The planning division zoning determination was appealed and  
17 affirmed by the County Hearing Examiner on November 8, 1988. Pacific  
18 Topsoil has appealed this zoning decision to Superior Court. Neither  
19 a stay of that Hearing Examiner zoning decision, nor a Superior Court  
20 decision on the appeal have issued.

#### 21 VI

22 The Health District permit denial was appealed to the Health  
23 District's Hearing Examiner. On January 19, 1989 the Examiner issued  
24  
25

1 a decision affirming the denial. Pacific Topsoil appealed that  
2 decision to this Board.

3 VII

4 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
5 adopted as such. From these Findings of Fact, the Board enters this:

6 CONCLUSIONS OF LAW

7 I

8 Chapt. 70.95 RCW Solid Waste Management, its implementing  
9 regulations at Chapt. 173-304 WAC, and the local Health District  
10 regulations EHD 8-30 (where not inconsistent) govern this appeal. The  
11 purpose of the solid waste statute is to assign the primary  
12 responsibility for adequate solid waste handling to local government.  
13 RCW 70.95.020(1).

14 II

15 The Pacific Topsoil operation handles sludge which is a defined  
16 "solid waste". WAC 173-304-100(73).

17 The Pacific Topsoil facility recycles or utilizes solid waste on  
18 the land by accumulating it in piles for recycling and utilization.  
19 WAC 173-304-300(1)(a)(iii). As such, the facility is required to  
20 apply for and obtain a solid waste permit under WAC 173-304-600. WAC  
21 173-304(3)(a).

22 III

23 WAC 173-304-300(3)(f) requires that all waste recycling  
24  
25  
26

1 facilities comply with applicable local, state and federal laws and  
2 regulations.

3 WAC 173-304-600(2)(d) states that:

4 (d) The jurisdictional health department shall  
5 investigate every application to determine whether the  
6 facilities meet all applicable laws and regulations,  
7 conforms with the approved comprehensive solid waste  
handling plan and complies with all zoning  
requirements. [Emphasis added.]

8 We conclude that the Snohomish County Hearing Examiner's  
9 determination that the facility did not conform to the zoning was a  
10 "final decision" for purposes of the the Health District's denial of  
11 Topsoil's application.

12 The Health District was therefore required to deny the permit  
3 because of the zoning decision. WAC 173-304-300(f) and -600(2)(d).  
14 See also, Snohomish County Environmental Health Division Regulations  
15 EHD 8-30-125(2)(e).

16 The mere existence of an appeal to Superior Court of the zoning  
17 decision does not somehow entitle Pacific Topsoil to operate as though  
18 it has an ongoing, effective permit from the Health District. If the  
19 zoning decision were ultimately overturned, then the Health District  
20 would be obliged to process Topsoil's application under the  
21 appropriate environmental and health criteria, a procedure which was  
22 terminated by the zoning decision. If the Health District's final  
23 decision were then adverse to Pacific Topsoil, such decision could be  
24 appealed to this Board.

25  
26  
27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
PCHB NO. 89-34

1 Our present holding is simply to the effect that, assuming the  
2 proposed use is not allowed by the zoning ordinance, the Health  
3 District was correct in denying the application.

4 IV

5 Appellant contends that under EHD 8-30-125(h), Snohomish County  
6 Health District was required to either approve or disapprove within 90  
7 days of receiving a completed permit application. Appellant argues  
8 that respondent failed to do this, and therefore its subsequent denial  
9 was untimely and either Pacific Topsoil's 1987 permit continued in  
10 effect or the 1988 permit has not been lawfully denied.

11 Appellant misreads EHD 8-30-125(h).<sup>1/</sup> That regulation states  
12 in full:

13 (h) When the Health Officer has evaluated all  
14 pertinent information, he [sic.] may issue a permit.  
15 Every completed solid waste permit application shall be  
16 approved or disapproved within ninety days after its  
17 receipt by the Health Officer or the applicant shall be  
18 informed as to the status of the application.  
19 [Emphasis added.]

20 We conclude that at the very least Snohomish County's August 4, 1988  
21 letter informed the applicant of the status of the application.  
22 Appellant's arguments are without merit.

23 VII

24 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
25 adopted as such. From these Conclusions of Law, the Board enters this:

26 <sup>1/</sup> EHD 8-30-125(h) is substantially the same as  
27 WAC 173-304-600(2)(g).

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
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ORDER

As announced orally to the parties at the hearing, the denial of the permit is AFFIRMED.

DONE this 26<sup>th</sup> day of February, 1990.

POLLUTION CONTROL HEARINGS BOARD

Judith A. Bendor  
JUDITH A. BENDOR, Presiding

Wick Dufford  
WICK DUFFORD, Member